IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1708 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL GOKAL JYRAM & CO

Versus

MEMON CO-OP BANK LTD

Appearance:

1. Special Civil Application No. 1708 of 2001

MR TV SHAH for Petitioner No. 1-6

MR TUSHAR MEHTA for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 04/04/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Shri Tushar Mehta for respondent no.1. Respondents nos 2 and 3 are quasi judicial authorities and therefore they are permitted to be deleted. At the request of the learned advocates, the petition is finally heard today.

The petitioners have mainly challenged the validity of an ex-parte order passed by the Board of Nominees below Exh.4 in Lavad Case No. 72/2001 dated 24th January, 2001.

It has been submitted by the learned advocate for the petitioners that the impugned orders are bad in law, for the reason that the petitioners were not given any opportunity of being heard before the said orders were passed. So far as the order passed below Exh. 4 dt. 24th January, 2001 by the Board of Nominees, Rajkot is concerned, it has been submitted by the learned advocate that after the said ex-parte order granting ad-interim relief was passed by the Board of Nominees, the petitioners had submitted an application objecting to the said order and raising certain preliminary objections. It has also been submitted by the learned advocate for the petitioners that the petitioners were not given certain documents on which respondent no. 1 Bank had relied upon in Lavad Case No. 72/2001. It has been submitted that the objections raised by the petitioners have not been decided by the Board of Nominees till today and in absence of the copies of the documents, the petitioners have not filed their reply before the Board of Nominees. It has been therefore submitted by the learned advocate that the said order passed below Exh. 4 in Lavad Case No. 72/2001 is bad in law and therefore it should be quashed and set aside.

Thereafter, it has been submitted on behalf of the petitioners that the petitioners have also been aggrieved as no final order below Exh. 18 application has been passed. It has been submitted by the learned advocate that the preliminary objections raised by petitioners should have been decided as early as possible but the said objections have not been decided so far.

On the other hand, learned advocate Shri Tushar Mehta appearing for the respondent Cooperative Bank has submitted that the petitioners are principal debtors and guarantor and they are liable to make payment of the amount lent by the respondent Bank. As the amount has not been paid inspite of several notices, the respondent Bank was constrained to approach the Board of Nominees, Rajkot by filing Lavad Case No. 72/2001. It has been submitted that the order dated 24th January, 2001 passed below Exh. 4 is an ex-parte order of the Board of Nominees. It has been submitted that the petitioners are trying to delay the proceedings by not filing reply. Frivolous applications have been filed by the petitioners

before the authorities below so as to delay the proceedings. As the petitioners are not inclined to repay the amount lent by the respondent Bank, it has been submitted by the learned advocate, an application praying for supply of copies of the documents executed by the petitioners has been filed. The said application is absolutely frivolous as the petitioners must be having the copies of the documents described in Exh. 3, which is a list of the documents, as the said documents had been executed by the petitioners. Inspite of the said fact, it has been submitted by the learned advocate for the respondent Bank that the respondent Bank is ready and willing to give copies of all the relevant documents relied upon by the respondent Bank and details whereof have been given in Exh. 3, the list of documents.

I have heard the learned advocates and have noted the fact that the impugned order has not been passed after hearing both the sides. It is very clear upon perusal of the impugned order that the said order is an ex-parte order in the nature of ad-interim relief. The concerned authority was to hear the petitioners but some how the petitioners did not file their reply and, therefore, no final order has been passed so far. Looking to the peculiar facts of the case, and to see that the proceedings which are pending before the authorities below, in my opinion it would be just and proper if the parties to the litigation are given certain directions so that the proceedings pending before the authorities below can be concluded as soon as possible.

So far as the order below Exh. 4 is concerned, it appears that hearing of the said application was fixed on 7th February, 2001. Thereafter, the said application has not been heard for the reason that the petitioners' advocate had prayed for time or had filed another application praying for copies of the documents, which were relied upon by the respondent Bank. Looking to the fact that the petitioners have demanded copies of the documents on which the respondent Bank has relied upon, as agreed by learned advocate Shri Tushar Mehta appearing for the respondent Bank, it is directed that copies of the documents referred to in Exh. 3 shall be given to the petitioners on or before 20th April, 2002. Upon getting the copies of the documents referred to hereinabove, as agreed by the petitioners,the petitioners shall file their reply within four weeks from the receipt of the copies of the documents. It would be open to the petitioners to raise all contentions available to them in their reply. Upon filing the said reply, the Board of Nominees shall take up the application below Exh. 4 as

well as application below Exh. 18. for hearing. Both the applications shall be heard together. The learned advocates and the parties to the litigation shall not pray for time before the Board of Nominees unless there is a justifiable reason and the Board of Nominees shall pass final order as soon as possible and preferably before 29th June, 2002.

So far as the proceedings which are pending before the Tribunal are concerned, in my opinion, if the application below Exh. 4 and 18 are heard, the proceedings before the tribunal shall become infructuous for the reason that the said proceedings have arisen as application below Exh 4 was pending at the relevant time. Status quo as on today shall be continued till the application referred to hereinabove are finally disposed of.

In view of the above directions, the petition is partly allowed. Rule is made absolute to the above extent with no order as to costs.

(A.R. DAVE, J.)

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